

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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IN RE JOHNSON & JOHNSON : TRANSCRIPT OF  
POWDER PRODUCTS MARKETING, : STATUS CONFERENCE  
SALES PRACTICES. : MAY 15, 2018  
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CLARKSON S. FISHER UNITED STATES COURTHOUSE  
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FRED A. L. WOLFSON, USDJ

A P P E A R A N C E S:

BEASLEY ALLEN, ESQUIRES

BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)

-and-

ASHCRAFT & GEREL, ESQUIRES

BY: MICHELLE A. PARFITT, ESQUIRE (VIRGINIA)

-and-

LEVIN PAPANTONIO, ESQUIRES

BY: CHRISTOPHER V. TISI, ESQUIRE (FLORIDA)

-and-

BURNS CHAREST, ESQUIRES

BY: WARREN BURNS, ESQUIRE (TEXAS)

-and-

COHEN PLACITELLA & ROTH, ESQUIRES

BY: CHRISTOPHER M. PLACITELLA, ESQUIRE (NEW JERSEY)

-and-

WILENTZ, ESQUIRES

BY: DANIEL R. LAPINSKI, ESQUIRE (NEW JERSEY)

On Behalf of the Plaintiffs Steering Committee

(Continued.)

\* \* \* \* \*

VINCENT RUSSONIELLO, RPR, CRR, CCR  
OFFICIAL U.S. COURT REPORTER  
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A P P E A R A N C E S C O N T I N U E D:

DRINKER, BIDDLE & REATH, ESQUIRES

BY: SUSAN M. SHARKO, ESQUIRE

JULIE L. TERSIGNI, ESQUIRE

-and-

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, ESQUIRES

BY: JOHN H. BEISNER, ESQUIRE (WASHINGTON, D.C.)

On behalf of Defendant Johnson & Johnson

SEYFARRTH & SHAW, ESQUIRES

BY: THOMAS L. LOCKE, ESQUIRE (WASHINGTON D.C.)

-and-

BARRY, McTIERNAN & WEDINGER, ESQUIRES

BY: ALEXANDRA J. TAYLOR, ESQUIRE (NEW JERSEY)

PATRICIA S. CASAMENTO, ESQUIRE (NEW JERSEY)

On Behalf of Defendant PCPC

TUCKER ELLIS, ESQUIRES

BY: CAROLINE M. TINSLEY, ESQUIRE (MISSOURI)

On behalf of PTI Union, LLC and PTI Royston, LLC

COUGHLIN DUFFY, ESQUIRES

BY: MARK K. SILVER, ESQUIRE (NEW JERSEY)

-and-

GORDON & REES, ESQUIRES

BY: ANN THORNTON FIELD, ESQUIRE (PENNSYLVANIA)

On behalf of Defendant Imerys Talc America

**C E R T I F I C A T E**

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE  
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE  
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE  
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello  
VINCENT RUSSONIELLO, CCR  
OFFICIAL U.S. COURT REPORTER

1 (In open court.)

2 THE DEPUTY CLERK: All rise.

3 JUDGE WOLFSON: Thank you. Everyone may be  
4 seated. Good morning. Sorry for the little bit of a  
5 delay this morning.

6 Okay. Let's see where we are.

7 Let's talk about the agenda that you sent me  
8 which also includes one of the significant issues you  
9 want to address today which are the competing orders  
10 that you have with regard to the dismissals that we  
11 spoke about on the phone for which I would hope there  
12 would be resolution, but apparently you reached an  
13 impasse. Is that right?

14 MS. O'DELL: That's correct, your Honor.

15 JUDGE WOLFSON: Okay. We'll get to that in a  
16 moment.

17 Let's look at some of the other issues that we  
18 have. My understanding is, first of all, with the  
19 sampling protocol, the issue that was initially raised  
20 to Judge Pisano has been resolved with that particular  
21 law firm, the state case. Correct?

22 MS. SHARKO: Yes, your Honor. The judge in  
23 Kentucky ruled that the MDL protocol should govern  
24 which is appropriate since those lawyers were in fact  
25 signatories to it.

1 JUDGE WOLFSON: Right.

2 Now, I know that you had also said at one  
3 point there may have been some others you were going  
4 to have the same issue with. Has that all gone by the  
5 wayside?

6 MS. O'DELL: There are no others that I'm  
7 aware of, your Honor.

8 JUDGE WOLFSON: No others at this point.  
9 Okay.

10 MS. O'DELL: That had the similar issues to  
11 what we raised in the Kentucky case.

12 MS. SHARKO: We hope that remains the case.

13 JUDGE WOLFSON: So that issue is gone.

14 But what you are now submitting to Judge  
15 Pisano is the issue of the 30(b)(6) depositions and  
16 the contours of the areas, and I saw letters are going  
17 back and forth or beginning to go back and forth  
18 including the dates for the depositions. So that's  
19 before him?

20 MR. TISI: Yes, your Honor.

21 THE COURT: All right.

22 It appears that the most substantial issues  
23 are those between J&J and the plaintiffs and not  
24 necessarily all in place with regard to Imerys and  
25 PCPC but closer. Correct?

1 MR. TISI: I think that's fair, your Honor.

2 JUDGE WOLFSON: Okay.

3 Now, what about third-party documents and  
4 motions to compel, these three nonparty witnesses?

5 MR. TISI: Your Honor, very briefly by way of  
6 background --

7 JUDGE WOLFSON: I read the letter.

8 MR. TISI: So really where we are is, what we  
9 learned is that two of the witnesses have in fact been  
10 served. It was our assumption based upon  
11 conversations I had when we were negotiating the  
12 contours of the actual notice of the deposition itself  
13 and the subpoena, it was our understanding that  
14 because each of these witnesses had been in fact  
15 retained as litigation consultants and/or experts by  
16 the defendants, that they would pull communications  
17 that they had, each of the witnesses had with whatever  
18 the retaining defendant would be and that they would  
19 be returned to us.

20 It is my understanding, although I guess we  
21 need some clarification, that the defendants currently  
22 have the documents from these three witnesses. If  
23 they do, we would ask that you would compel their  
24 production at this point because we don't have them.  
25 But assuming that they don't have them, we would like

1 to have an order compelling two of the witnesses who  
2 we know have in fact been served.

3 We have done on one of the witnesses, Dr.  
4 Muscat, we have some -- there was some confusion.  
5 We've tried to clarify that before today's hearing.  
6 If not we will get him served right away. But we  
7 would like to have his documents as well. All three  
8 of them are scientists or involved in the  
9 science-related issues that we are litigating right  
10 now.

11 JUDGE WOLFSON: I thought in reading the  
12 letter you are willing to working to get these  
13 documents.

14 MR. TISI: Well, your Honor --

15 JUDGE WOLFSON: Let Ms. Sharko respond for  
16 herself.

17 MS. SHARKO: Thank you.

18 So some seven months ago we negotiated the  
19 form of the subpoena with the plaintiffs. We heard  
20 nothing. Then in the last week they said: Where are  
21 the documents?

22 We were not aware as to whether or not there  
23 had been service or not. So within the last couple of  
24 days Mr. Tisi sent us what purports to be proof of  
25 service. It was not filed as the local rules require.

1           We're looking at what they say is proof of  
2     service. I'm not sure that these witnesses have in  
3     fact been served or that that is valid service. So we  
4     need to figure that out.

5           Once that's figured out, I will let him know  
6     our position and if they haven't been validly served  
7     the plaintiffs can then serve them. Once they are  
8     served then we will want to review the documents  
9     first.

10          I agree with that much. But we are not there  
11     yet, and it would be premature to enter any kind of  
12     order at this point.

13          MR. TISI: Well, your Honor, we do have  
14     affidavits of service for two of the witnesses. In  
15     fact, I'm holding them in my hand right now. The fact  
16     that they were not apparently served under the local  
17     rules doesn't affect the service of it. We'll file it  
18     administratively with the Court.

19          They were served late last year, both Dr.  
20     Bailey and, Dr. Hunchareck were served. I have the  
21     affidavits. We can provide them. So there is no need  
22     to go back and re-serve them.

23          It was my expectation and the reason why this  
24     got held up was because there had been those  
25     discussions that they would go to the defendants, at



1 least they would review them for the purposes of --  
2 our agreement was that communications with counsel  
3 would be pulled, litigation counsel to be clear. They  
4 were very much involved even up until today on the  
5 regulatory and science issues, and even up until today  
6 we would like to get those documents.

7 So I have those two. If the Court would  
8 agree, I think we would like to be able to get those  
9 documents immediately and we would like to be able to  
10 get an order compelling at least those two and we will  
11 find out what is remaining with respect to Dr. Muscat.

12 JUDGE WOLFSON: I don't know that you need an  
13 order. We do operate under meet and confer here.

14 So first I think there was the issue whether  
15 there was service. You have to show them there was  
16 service. I think the indication is if there has been  
17 service you are going to move ahead. Right?

18 MS. SHARKO: Right. And I'm not convinced  
19 that there's been valid service, but we'll look at  
20 that and we'll work it out.

21 JUDGE WOLFSON: Well, how were they served?

22 MR. TISI: They were served by process server.  
23 I have the affidavits. In fact, I gave them to Ms.  
24 Sharko last week.

25 MS. SHARKO: So what we were given last week

1 were statements about serving a representative. There  
2 was no personal service. I think Rule 45 requires for  
3 an individual personal service.

4 JUDGE WOLFSON: Where were they served, at  
5 their home or --

6 MR. TISI: They were served at their home.

7 JUDGE WOLFSON: If it's at home, it's any  
8 adult over the age of 18 can accept service.

9 MS. SHARKO: It wasn't at home. But we're  
10 trying to find the people and we're looking at the law  
11 and either service was valid or it wasn't. If we  
12 believe it wasn't, we'll tell Mr. Tisi and I assume  
13 that he will get the people served. I don't know why  
14 we haven't heard anything on this for seven months.

15 MR. TISI: These are experts that they have as  
16 well. They aren't people who are just incidental.  
17 These are retained witnesses by the defendants. They  
18 have some control and custody over these witnesses.  
19 It's silly to us. I have been under the impression  
20 that these documents had been reviewed.

21 In fact, I had spoken to Imerys' counsel. We  
22 had been working collaboratively on getting these  
23 materials. I thought they were in the process of  
24 being produced. When I emailed counsel about it, I  
25 had no idea these were not what we thought they were.

1 These are witnesses that have been retained by the  
2 defendants.

3 JUDGE WOLFSON: Are they retained by you  
4 currently?

5 MS. SHARKO: I don't know the answer to that.

6 MR. TISI: I have an email from counsel saying  
7 that they are.

8 MS. SHARKO: But it's not an issue that we  
9 are -- now that the issue has been raised and he has  
10 asked, we will facilitate the document production.  
11 But I think service is important and there may or may  
12 not be an issue. We just need to figure that out.

13 JUDGE WOLFSON: Look, let's be real. They may  
14 be third parties. On the other hand, if ultimately  
15 they are your retained consulting experts, even if  
16 they are not going to issue reports, to some extent I  
17 would think that you might even prefer if you could  
18 agree with these experts to accept service.

19 We don't want to go around the block on this.  
20 They are not strangers to the litigation if they are  
21 your consulting experts. I don't know why it's  
22 becoming so difficult. I would prefer to see some  
23 cooperation.

24 Unless what you are telling me if these  
25 consulting experts that you are paying, unless that's

1 not the case that you have retained have said to you,  
2 We refuse you to let you accept service and they have  
3 to serve us personally and they haven't done so, if  
4 that's the case, good, let them know that.

5 But if it's not, let's get real, please, Ms.  
6 Sharko, and I'll say that to Imerys counsel, too. I  
7 don't know if you are standing on ceremony about  
8 service or not. I don't know who controls these  
9 people. I don't know if it's jointly because you are  
10 saying Imerys. You are saying J&J. Are they your  
11 people?

12 MS. SHARKO: Mr. Tisi, I understand what you  
13 are saying and we will cooperate as always. But Mr.  
14 Tisi raised this for the first time within the last  
15 couple of days. It's that silence --

16 JUDGE WOLFSON: I don't need the tit for tat.  
17 You may say it wasn't raised recently. I'm putting  
18 out there on the table today that I don't want to see  
19 it.

20 MS. SHARKO: I understand.

21 JUDGE WOLFSON: I think this is wasting our  
22 time and expense and there is no reason for it. Let's  
23 move on.

24 MR. TISI: Thank you, your Honor.

25 JUDGE WOLFSON: You wanted to speak. I'm

1       sorry.

2               MR. SILVER:   That's all right, your Honor.   We  
3       moved on.

4               JUDGE WOLFSON:   That's probably a good move.

5               MS. SHARKO:   I would just ask, if there are  
6       any other subpoenas out there where they have served  
7       and they haven't file proof of service or told us  
8       that, just let us know so we know what's out there.

9               MR. TISI:   I have no problem with that, your  
10       Honor.   With the administrative thing we thought it  
11       was filed and it had not been.

12              JUDGE WOLFSON:   Okay.

13              Then you have privilege issues that are being  
14       presented to Judge Pisano with regard to Imerys.

15              MR. BURNS:   That's correct, your Honor.

16              JUDGE WOLFSON:   Okay.   That's his thing then.  
17       All right.

18              The samples and testing which I had brought up  
19       initially, my understanding therefore is the testing  
20       has begun and plaintiffs are saying that they expect  
21       120 days.   Defendants say it's too long.   So you've  
22       had them for about a month and a half, March 27th?

23              MS. O'DELL:   March 27th we got some J&J  
24       samples, and from Imerys on April the 10th.

25              Your Honor, we had suggested that we need

1 120 days which would take us to September 15th.  
2 That's 115 working days for this lab. I want to  
3 describe to you the process, your Honor, to do the  
4 testing that's required.

5 JUDGE WOLFSON: You people picked the lab. Is  
6 that what the lab is saying, they require this time?  
7 I want to know where it's coming from, how you came up  
8 with the time.

9 MS. O'DELL: Let me start by saying, we have  
10 135 samples to test. The lab, the expert lab is Dr.  
11 Bill Longo's lab. It's Materials Analytical Services.  
12 He's the premier lab in the country. The testing that  
13 will be done on these samples involve TEM testing,  
14 transmission electron microscopy testing.

15 To prepare the samples it takes 14 hours per  
16 sample to do the actual analysis of the sample for TEM  
17 and then for what they call EXRD. If you find fibers  
18 such as asbestos, it requires 15 to 21 hours for a  
19 total of 29 to 35 hours per sample.

20 And what Dr. Longo and his team have told us  
21 is that for the sample preparation that can be sped  
22 up, if you will, because you have multiple technicians  
23 preparing samples. But when it comes down to the  
24 analysis, the TEM analysis, it takes 15 to 21 hours.  
25 That variance is because of what they find.

1           Now, if they find a certain number of bundles  
2     it takes longer for them to document that. When I  
3     mean "bundles," your Honor, I'm talking about asbestos  
4     fibers. So that process has a very specific  
5     timeframe. So as soon as they got the samples they  
6     began to work. They have been working diligently.

7           But Dr. Longo has conveyed to me as recently  
8     as last night to confirm that he needs 120 days to  
9     accomplish the testing using the methodology that he  
10    has testified to across the country. He's been  
11    accepted on Daubert on this methodology. His  
12    methodology has been published in the literature.

13           So we feel it's very critical that we do this  
14    correctly because as Ms. Sharko pointed out the MDL  
15    protocol controls and it controls not only for ovarian  
16    cancer cases within the MDL, but it's going to control  
17    for state ovarian cancer cases, for state mesothelioma  
18    cases, and your Honor not for just cases that are  
19    pending now but cases in the future because as Ms.  
20    Sharko has raised several times there is a finite  
21    amount of material. This is an opportunity to do the  
22    testing and there will be most likely limited testing  
23    done on these particular samples in the future.

24           So that's what we're dealing with, your Honor.  
25    Dr. Longo has indicated this is the time needed and

1 that's why we've requested it. We feel like this is  
2 very important that we have, one, the premier lab in  
3 the country do it, that we have this number of samples  
4 tested because it's representative across not only the  
5 products, both Baby Powder and Shower To Shower but  
6 also across the time period which goes from the '60s  
7 through the present across defendant because we had  
8 samples from Imerys and also samples from J&J and also  
9 across the mines from which the talcum powder was  
10 sourced.

11 So there are a lot of things that we have to  
12 cover to ensure there is representative testing.  
13 That's what we've tried to do. That's the timeframe  
14 for Dr. Longo and his team. I have been to his lab.  
15 It's a state of the art facility with many scientists  
16 there. They are working very hard. We have pressed  
17 them to do it as quickly as possible and this is the  
18 timeframe that's been given to us.

19 MS. SHARKO: So here's what's so frustrating.  
20 I acknowledge --

21 JUDGE WOLFSON: Because you want your Daubert  
22 hearing. I know it's frustrating, Ms. Sharko.

23 MS. SHARKO: Right. But Dr. Longo is the  
24 plaintiffs' go-to expert for this. He is involved in  
25 all of the asbestos cases for these same plaintiffs.



1 And while we sit at the station waiting for our  
2 Daubert hearing these same lawyers continue to prepare  
3 and try cases across the country in state court. The  
4 Lanier firm assisted by Ashcroft & Gerel and Cohen  
5 Placitella and all these other firms has a 23  
6 plaintiff ovarian cancer case with Dr. Longo as an  
7 expert set to go in Missouri on June 2nd or 4th.

8 That's followed by by another multi-plaintiff  
9 case in St. Louis with the Beasley Allen firm and  
10 other firms backed up behind it called the Forest  
11 case, and there is another case where discovery is  
12 progressing, set for trial behind that in St. Louis,  
13 another ovarian cancer case with these same lawyers.  
14 Then they have a case against PTI, the Beasley Allen  
15 firm, that they are pressing for a trial date in St.  
16 Louis County. Those are just the ovarian cases.

17 Then we get to the asbestos/talc cases around  
18 the country. There is one being tried right now in  
19 California. There are others with trial dates. There  
20 was one that was tried up in New Brunswick again with  
21 Dr. Longo as an expert.

22 So all these cases are moving forward and we  
23 are still here and that is what is frustrating about  
24 it. If we wait until September for this testing to be  
25 completed, we are not going to see a Daubert hearing

1 for a year. I hope that's not true, but that's the  
2 reality of it. So if Dr. Longo can be doing all this  
3 testing for St. Louis and St. Louis and St. Louis and  
4 California, the MDL should be a priority.

5 MS. O'DELL: Your Honor, there are so many  
6 things that I disagree with about what Ms. Sharko just  
7 said. Let me just start with a few things.

8 Dr. Longo has testified in recent trials and  
9 he testified in relation to testing of samples that  
10 are distinct and different from the samples that have  
11 been produced in the MDL. So that testing is ongoing  
12 right now.

13 I expect Dr. Longo will testify in the  
14 June 4th trial in St. Louis with the Linear firm.  
15 Ms. Parfitt is not involved in that case. For the  
16 Beasley Allen cases Dr. Longo has not been retained in  
17 those cases. So to the degree there was some  
18 suggestion that that was the case, that's not because  
19 we don't think he is a great witness. He just did not  
20 happen to be in those cases.

21 So the point being, your Honor, we have the  
22 task before us to test the samples that have been  
23 essentially lodged within your jurisdiction. They  
24 have not been made available in other cases. And so  
25 we have the responsibility to do the testing with the

1 methodology that is accepted in the scientific  
2 community and that's what we're doing.

3 JUDGE WOLFSON: I'm not concerned about the  
4 testing itself. The real question is, I know he said  
5 120 days. It's already started.

6 MS. O'DELL: Yes.

7 JUDGE WOLFSON: And the question is, as you  
8 pointed out, there are going to be multiple  
9 technicians that are perhaps doing this at the same  
10 time. So my real question would be -- I'm going to  
11 let it be the amount of time that's really necessary.  
12 Of course, I don't have any kind of declaration from  
13 Dr. Longo as to all of this. I accept what you've  
14 said he has told you.

15 But the question is: Is there any way to save  
16 some time on this? I don't think we're going to save  
17 a lot. I don't think it's going to be less than  
18 90 days. But can we work with 90 as opposed to 120?  
19 I'm just asking these questions and I would like to  
20 get some more information.

21 I'm going to let it be done and I'm going to  
22 let it be done correctly. I appreciate the estimates  
23 you are given me on the amount of man hours involved  
24 for each of these samples. But I also don't know how  
25 many people are in this lab and how many people are

1 going to be doing it at the same time. So I'm a  
2 little bit at a loss and I understand you are getting  
3 whatever information he's providing to you.

4 This is the testing lab you are using. I  
5 guess you people are not involved with it?

6 MS. SHARKO: No, not at all.

7 JUDGE WOLFSON: So you don't have any of these  
8 same discussions with Dr. Longo. That's all on the  
9 plaintiffs' end only. All right.

10 I would like to work with something shorter  
11 than 120 days. I'm going to be reasonable about it.  
12 I would like to see if you could go back and shorten  
13 it to 90 and you are going to let us know and then  
14 I'll work from those dates.

15 I think this also goes back to obviously dates  
16 that we set previously or that Judge Pisano was  
17 setting previously were all being triggered by when  
18 the sample work was done, which he believed to be in  
19 July. You are now suggesting September. Maybe we can  
20 get it to be mid-August, if we could move it up a  
21 little bit, but that's going to affect all the trigger  
22 dates.

23 MS. O'DELL: Your Honor, I'm happy to come  
24 back in June and report to you further. We have  
25 really pressed him to do this as quickly as possible.

1 JUDGE WOLFSON: Okay.

2 MS. O'DELL: We understand that as soon as  
3 it's finished that we have a duty to inform the Court  
4 it's finished so the 45 days are gone. So we are  
5 working very diligently toward that end and we will  
6 definitely report back to Dr. Longo and say we need it  
7 as quickly as possible and if you can do it less than  
8 120 days please do that and let us know.

9 I just want to say for the record, your Honor,  
10 when Judge Pisano laid out the facts in the letter of  
11 February 6th, at that point in time we really didn't  
12 know the number of samples involved and a lot of the  
13 information now that we are really in the thick of it,  
14 if you will, in terms of testing.

15 Thank you.

16 JUDGE WOLFSON: In the end we are quibbling  
17 about it but there are always delays. If I'm saying  
18 90 versus 120, we are only the talking 30 days. But  
19 then I know the next date that will be come there will  
20 be some reason why that is going to be extended. We  
21 know the trickle down effect every time there is some  
22 delay or extension. We're trying to avoid that.

23 So if we can get this done a little more  
24 quickly that would be great. You are going to let me  
25 know. And obviously I can't set a Daubert hearing

1 until I have these exact dates. So there we are.

2 Look, I would like to get it done as well.

3 Now, let's turn to these dismissals. We had  
4 discussion in a conference call and I hoped there  
5 would be resolution and there hasn't been. I have  
6 been given competing orders here from defense counsel  
7 and last night I was given the proposed orders from  
8 plaintiffs' counsel sometime yesterday.

9 Obviously, the real dispute here is, these are  
10 the cases for which the plaintiffs wanted to dismiss  
11 their actions, whether it's because they did not  
12 actually have ovarian cancer and I don't know what the  
13 other reasons are. We talked about that on the phone.  
14 I don't know if there are other reasons they want it  
15 dismissed.

16 MS. O'DELL: Your Honor, can I speak to that  
17 so you know what's before you?

18 JUDGE WOLFSON: Yes.

19 MS. O'DELL: We reached out to each of the  
20 counsel for plaintiffs in the list of cases. There  
21 are 14 cases listed. In 12 instances the plaintiffs'  
22 cancer did not meet the criteria for which the  
23 Plaintiffs Steering Committee is producing expert  
24 reports. So they are outside at the criteria, if you  
25 will. So that's 12 of the 14. Two involve plaintiffs

1     who died and their heirs whether that's the husband or  
2     remaining children for whatever reason do not feel  
3     that they can move forward with the case. So this is  
4     not a situation where it was suggested in the joint  
5     status report that plaintiffs are, quote, jumping  
6     ship.

7             In each instance there has been a very  
8     legitimate reason that the plaintiff has sought to  
9     dismiss without prejudice. And from our perspective,  
10    your Honor, plaintiffs are often criticized for filing  
11    cases that don't meet the criteria of the particular  
12    litigation and causing the docket to be populated by  
13    cases that aren't appropriate. In these instances the  
14    firms have chosen to try to clean it up themselves and  
15    I think that's a good thing.

16            MS. SHARKO: I can make this really easy. If  
17    there is only 12 cases and those are the reasons they  
18    want to dismiss, why don't we just work it out  
19    individually. I think that is the way our stipulation  
20    is drafted. The conditions about re-filing should  
21    work with those cases.

22            That's what we have done with other cases in  
23    the past and rather than try and have this global form  
24    of order -- and I can go through the plaintiffs  
25    paragraph by paragraph, but I won't at this point. If

1 it's just those 12 cases and they don't have ovarian  
2 cancer or they died and don't want to proceed, let's  
3 just do it case-by-case.

4 JUDGE WOLFSON: Well, they want to know what  
5 is the term that you are going to include. Because I  
6 guess for the ones who have died and they don't want  
7 to proceed, if at some point, let's say, six months  
8 from now they decide they want to proceed, what  
9 happens?

10 And similarly for those 12 who don't fit the  
11 criteria, as you say, what you are leaving open is at  
12 some point in time if in fact they develop this kind  
13 of cancer, they are going to want to file a new case.

14 So we still have to deal with what happens  
15 upon a re-filing if someone's mind has changed and the  
16 Statute of Limitations does not run on it. So I still  
17 have to resolve it. It doesn't have to be, as you  
18 say, in the form of a global order, but you have to  
19 decide what's going in it, and you are still going to  
20 have this issue when you leave me today is what I'm  
21 going to say.

22 MS. SHARKO: I think it's pretty simple. If  
23 they change their mind or they develop ovarian cancer  
24 in the future, they re-file here in the MDL. We are  
25 going to be here for a while. And if we are not here,



1 they can file in their home state or New Jersey.

2 JUDGE WOLFSON: You don't care if they file in  
3 their home state.

4 MS. O'DELL: I don't. But, your Honor, they  
5 are not limited to that. And when Ms. Sharko says  
6 "it's pretty simple" it's just not the law in the  
7 District of New Jersey where there's not been  
8 substantial progress in a case where there would be no  
9 difference in the cost of a second lawsuit --

10 JUDGE WOLFSON: I'm trying to figure out:  
11 What other jurisdiction do you want? She's now  
12 saying, go ahead, file in your home state or file in  
13 the MDL. What else are you looking for?

14 MS. O'DELL: Well, in our proposed order we  
15 laid out the other appropriate jurisdictions for  
16 purposes of filing. It would be certainly the home  
17 state or resident state of the plaintiff. It would be  
18 the states in which they had their primary usage.

19 In other words, they lived in New Jersey for  
20 30 years and then moved to Florida. They arguably  
21 could file in New Jersey. It would also be the place  
22 where they are diagnosed or treated for the cancer.  
23 Or, lastly, and not to be forgotten, the resident  
24 states of the defendants which in this instance could  
25 be New Jersey for J&J, it could be California, or

1 Delaware for Imerys, it could be D.C. for PCPC for  
2 that matter, and there may be a time in the future,  
3 your Honor, where there are other defendants that are  
4 appropriate and you could file within those states.

5 The proposed order that was put forth by the  
6 Johnson & Johnson defendants precluded a plaintiff in  
7 the future from adding a defendant. How is that  
8 appropriate?

9 JUDGE WOLFSON: Well, that's not appropriate.  
10 I'm not going to direct that be done. That's not  
11 happening.

12 But I do understand your concern was you are  
13 worried about at some point fraudulent joinder, that  
14 they are joining someone that you're claiming  
15 shouldn't have been. But if they have a legitimate  
16 defendant to join, they're permitted to joinder. So I  
17 can't say here today that you can't ever join a  
18 defendant.

19 What we're really talking about is clearly  
20 setting up for -- defendants would like finality. If  
21 you define three jurisdictions it makes it easy.  
22 Everybody knows where you can go. Plaintiffs are  
23 suggesting that there are others that could be  
24 appropriate. Defendants may not agree that they are  
25 appropriate.

1           What you are trying to avoid is motion  
2     practice at some later date to say: That is not an  
3     propose jurisdiction. Right?

4           MS. SHARKO: Exactly. We don't agree that  
5     where you used the product, where you were diagnosed,  
6     et cetera, we don't agree that there is jurisdiction  
7     there.

8           JUDGE WOLFSON: But you preserve your rights  
9     and it's limited. The better language is, if we just  
10    leave it as opposed to you defining where  
11    substantially used, where diagnosed, if you simply  
12    make it as they can re-file in the MDL, they can  
13    re-file in their home state or wherever, there would  
14    be jurisdiction over the defendants named. It leaves  
15    open your defenses to argue it's the wrong  
16    jurisdiction and you file where you want and you can  
17    decide.

18          MR. SILVER: Judge, the other problem with  
19    plaintiffs' proposed order as I'm reading it now is, I  
20    take Ms. O'Dell at her word, but the 12 cases that  
21    she's talking about she's checked those out. This is  
22    a blanket order that essentially allows plaintiffs to  
23    dismiss without prejudice and essentially forum shop  
24    anywhere.

25          JUDGE WOLFSON: We're not going to do it. I

1 agree with Ms. Sharko's suggestion that it's a limited  
2 universe. I thought there were going to be a lot more  
3 cases.

4 We'll just do a separate order in each of the  
5 cases that has the parameters I just outlined in that  
6 way for that particular case and for these 14 cases  
7 only at this point and you'll deal with other ones if  
8 they come up.

9 MS. O'DELL: Your Honor, when you said  
10 appropriate jurisdiction for the defendant, if I could  
11 just raise again the issue of the circumstance where a  
12 plaintiff has substantial use in a particular state.  
13 They lived there for a period of time. They moved.  
14 That would be a location where jurisdiction would be  
15 appropriate because the tort, if you will, has  
16 occurred and --

17 JUDGE WOLFSON: That's fine except that the  
18 reason I don't want to deal with that is you'll have a  
19 dispute over what "substantial" means and you'll say:  
20 We were allowed to do this because this was  
21 substantial. Does substantial mean two years? Does  
22 substantial mean 20 years?

23 So when you start adding those things you are  
24 just creating more disputes. That's why I said:  
25 Let's just leave it at jurisdiction for which there

1 would be jurisdiction over the defendants. We're  
2 looking at specific jurisdiction in those cases and  
3 we'll have to analyze: Is that an appropriate  
4 jurisdiction? Because I don't want to define  
5 "substantial" now and we're not going to do that.

6 It's easier to know the ones that are not  
7 disputed are the home state of the plaintiff, the MDL,  
8 home state of defendant, and leave open any other  
9 jurisdiction where there could be jurisdiction  
10 asserted and you can argue at a later point. I don't  
11 want to get into what substantial means today.

12 So don't conclude that one. Let's have simple  
13 orders now that deal with this. Right?

14 MS. SHARKO: Right, in those individual cases.

15 JUDGE WOLFSON: In the individual 14 cases.

16 So that's for those issues.

17 So who is going to draft that?

18 MS. O'DELL: I will be happy to do it, your  
19 Honor.

20 JUDGE WOLFSON: She got up first. It's like  
21 Jeopardy. She rang the bell first.

22 Do I need to deal with at all PCPC, Item No.  
23 4, the dismissals?

24 MS. PARFITT: Your Honor, I had an opportunity  
25 to speak with Mr. Locke this morning and we're going

1 to work that out. We just need to reconcile the cases  
2 that PCPC believe are appropriate for dismissal.

3 It's not an issue with regard to the context  
4 of the order. It's just the cases and we just need to  
5 make sure there is a reconciliation and don't dismiss  
6 cases that wouldn't be appropriate. So he and I  
7 talked and we'll work it out and report back to the  
8 Court. There should be no problem.

9 Similarly, with regard to the amendment issue,  
10 that's Roman numeral IV, I have spoken to counsel for  
11 J&J and we will look at those 55 cases to find out  
12 whether or not pursuant to Rule 15, those cases have  
13 been -- whether there needed to be a motion or not.  
14 The contention here from the plaintiffs is that many  
15 of those may not have required a motion that there was  
16 the right under Rule 15 to amend post a responsive  
17 pleading.

18 So I think we can work out Roman numeral IV  
19 and Roman numeral V without need of the Court at this  
20 point.

21 JUDGE WOLFSON: And No. VI?

22 MS. O'DELL: Related to cases, your Honor,  
23 where there has been a short form complaint filed  
24 under CMO 8, but not a notice of filing a short form  
25 complaint in the master docket. The number there is

1 104 and Mr. Signy kindly provided a list of those now.

2 So we can go through those and reconcile the  
3 list. I know for the Beasley Allen cases, for  
4 example, we have filed the notices and we just need to  
5 do a reconciliation to get down to the filing number.  
6 It shouldn't be a problem.

7 With respect to the 331 cases that are listed  
8 here where defendants have stated that a short form  
9 complaint has not been filed, Mr. Beisner and Mr.  
10 Silver and I have been working on an agreement to  
11 address plaintiffs that were transferred into the MDL  
12 in multi-plaintiff complaints who were residents of  
13 either New Jersey, California or Delaware, and for  
14 which there would not be federal subject matter  
15 jurisdiction.

16 We've reached an agreement on that. We  
17 believe that most of those 331 plaintiffs are from  
18 those states. We'll take care of those and then get  
19 down to what may be some others that we can take a  
20 look at.

21 JUDGE WOLFSON: Okay.

22 These duplicate cases, you are still working  
23 on that. There is 73 of those. Right?

24 MS. O'DELL: Yes, your Honor.

25 JUDGE WOLFSON: I think that's basically your

1 agendas items. Correct?

2 MS. O'DELL: Yes.

3 MS. SHARKO: Yes.

4 JUDGE WOLFSON: I wanted to address just  
5 briefly -- I'll give as one example -- one of the  
6 remand and motion to dismiss motions involving Imerys.  
7 I'll give as an example Edna Brown which is docket No.  
8 17-5724.

9 I don't know if you were ready for this or not  
10 today. I'm not looking for oral argument because I  
11 understand you were not set for this today, but I want  
12 to tell you some concerns. I guess the Miller firm  
13 responded to that motion.

14 MS. O'DELL: I'm not aware, your Honor.

15 JUDGE WOLFSON: Well, the opposition brief was  
16 from the Miller firm. Nobody is here from the Miller  
17 firm?

18 MS. PARFITT: No, your Honor. I don't believe  
19 so.

20 JUDGE WOLFSON: I guess you can take a message  
21 back. What I had here is, this is one where they've  
22 named J&J, Walgreens and Imerys and have argued that  
23 because they named the local Walgreens claiming that  
24 there was not diversity, it should be remanded naming  
25 the retailer, and Imerys has filed a motion to dismiss



1 for lack of personal jurisdiction in Illinois.

2 Does this sound familiar to you at all?

3 MR. SILVER: I recognize the case, your Honor,  
4 and once you tell me the jurisdiction I know what the  
5 argument is.

6 JUDGE WOLFSON: Illinois.

7 MR. SILVER: Yes.

8 JUDGE WOLFSON: Okay. So there is no general  
9 jurisdiction and the focus obviously is going to be  
10 specific jurisdiction. But I want to tell you what my  
11 concern is and what's given me some pause, and there  
12 is argument back and forth and do I decide the motion  
13 to dismiss first? Do I decide the remand first? And  
14 there is discretion in the court depending on which is  
15 the easier question to answer.

16 One of the things that's being argued here,  
17 put aside the stream of commerce argument that the  
18 plaintiff tries to make with regard to Illinois, but  
19 what they focus on as well is this conspiracy theory.

20 Do you recall this?

21 MR. SILVER: I do, your Honor.

22 JUDGE WOLFSON: Okay. And the notion that  
23 J&J, Imerys and Walgreens conspired to hide or conceal  
24 information, and specifically that J&J and Imerys were  
25 members of the Cosmetic, Toiletry and Fragrance

1 Association and formed the Talc Interested Party Task  
2 Force and go on about hiding or deleting information  
3 from them.

4 I'm not getting into the real merits. But  
5 what I wanted to point out, first of all, is in your  
6 reply brief you didn't address the conspiracy theory.  
7 Of course the conspiracy theory doesn't also  
8 specifically address activity directed at Illinois.  
9 But the bottom line is, I probably will need to talk  
10 to the parties because the briefing really is  
11 inadequate to address the issues.

12 Moreover, you can take back to the Miller firm  
13 that the complaint on which they rely and argue about  
14 this notion of conspiring and that this is still a  
15 conspiracy theory that involves, quote, all  
16 defendants, it's very loose language in the brief  
17 because the brief suggests -- this is just  
18 highlighting, so when you come in you know what I'm  
19 going to want to talk about.

20 The brief suggests that the allegations are  
21 that the three of you conspired, J&J, Walgreens and  
22 Imerys, to keep this information and do certain  
23 actions with the Task Force, et cetera. But there is  
24 no allegation in the complaint that Walgreens was part  
25 of that group.

1           So I don't even know how they could argue that  
2   it was part of it, but loosely in the briefing it  
3   suggests that. Of course, you haven't addressed the  
4   conspiracy theory so you didn't address that point.  
5   But the briefing, for instance, says -- I don't even  
6   know that we need to be on the record for this. I'm  
7   giving everyone highlights of the problems that I'm  
8   having. Let me get out the language in the brief.

9           MR. PLACITELLA: Your Honor, can we stay on  
10  the record because we're going to have to hand this to  
11  somebody.

12           JUDGE WOLFSON: Okay. I understand.

13           It says on page 9 of the brief:

14           "Here plaintiff alleges that J&J, Imerys and  
15  Walgreens knowingly agreed, contrived, combined,  
16  confederated and conspired among themselves to cause  
17  consumer injuries," and it goes on.

18           This is the line. It says in the brief on  
19  page 10:

20           "On July 27, 2005, J&J, Imerys and Walgreens  
21  as part of the TIPTF corresponded and agreed to edit  
22  and delete portions of scientific papers being  
23  submitted on their behalf to the United States  
24  Toxicology Program in an attempt to prevent talc from  
25  being classified as a carcinogen, and Imerys and

1 Walgreens through the TIPTF collectively agreed to  
2 release false information to the public."

3 I am not seeing in the complaint where  
4 Walgreens was involved in these groups to make them  
5 part of those allegations, apart from the fact of  
6 whether it was targeted to Illinois as opposed to  
7 anywhere else.

8 You see the problems I'm having. Of course,  
9 if Imerys had briefed that they would have pointed out  
10 all those problems in their reply, but here we are.  
11 But the question also is, if I find that there is no  
12 jurisdiction over Imerys, do these plaintiffs still  
13 not want to stay in the MDL? You've got Walgreens out  
14 there. But I got to tell you, the allegations as they  
15 have been against Walgreens isn't going to really fly  
16 here.

17 What I'm really saying is, I've got to deal  
18 with the jurisdiction question I guess over Imerys. I  
19 want to know really what this Miller firm wants to do  
20 and I don't want to waste my time.

21 MS. O'DELL: We'll convey that to them, your  
22 Honor, and certainly provide the transcript.

23 JUDGE WOLFSON: And if we need to pursue it,  
24 it might be easier just to bring everybody in and do  
25 it on the record. I'll just do the motion.

1 MR. SILVER: Judge, we can do something on  
2 briefing. But if the plaintiffs want to amend their  
3 complaint, and they don't want to take time to do the  
4 briefing --

5 JUDGE WOLFSON: I think what you should do is  
6 talk to them. Bottom line is I still don't see --  
7 first of all, and you can have this on the record too,  
8 the stream of commerce idea, putting something in the  
9 stream of commerce we know that's out the window on  
10 personal jurisdiction for specific jurisdiction. It  
11 just is. Just the fact you put something in the  
12 stream of commerce doesn't mean you directed it to  
13 Illinois. That's not going to fly.

14 So the only thing they are arguing now really  
15 that's different is conspiracy. But I don't see any  
16 argument where that conspiracy is directed to  
17 Illinois, that they conspired in Illinois because  
18 there aren't any allegations about them really  
19 conspiring in Illinois. I don't want to waste my  
20 time.

21 MS. O'DELL: Your Honor, we'll convey it to  
22 them. I'm hesitant to say anything.

23 JUDGE WOLFSON: Don't, and I'm not going to  
24 put you on the spot. I don't think you should speak  
25 for someone else, but that's where we are.

1           So it might be easier if you talk to the  
2 Miller firm and if you could see where we are -- you  
3 want to stay in the MDL?

4           MR. SILVER: Yes.

5           JUDGE WOLFSON: You want to stay in the MDL --

6           MR. SILVER: Yes.

7           JUDGE WOLFSON: -- then we don't have to worry  
8 about the other things, jurisdiction, remand,  
9 et cetera.

10          MR. SILVER: We will also reach out to the  
11 Miller firm and if we need the Court's assistance we  
12 will let you know.

13          JUDGE WOLFSON: Why don't you speak with them.  
14 That's what I wanted to highlight. Trying to go  
15 through these one by one on these remands, that's one  
16 of the issues I had here.

17          Any other issues you want to address with me  
18 today?

19          MS. SHARKO: I'm happy to report Mr. Lapinski  
20 and I worked out the deposition protocol order and  
21 we'll present it to your Honor for signature.

22          MR. LAPINSKI: Not everything has to be  
23 contentious, your Honor.

24          JUDGE WOLFSON: I like it. That's excellent.

25          I think our next date was June 28th, but I may

1 have a problem on that date. The date after that is  
2 July 25th, I believe.

3 Is there any other day, either the 26th or  
4 27th? Neither of those dates work?

5 MS. SHARKO: No.

6 JUDGE WOLFSON: And then the next week is the  
7 4th of July week. I don't know that anybody wants to  
8 come in that week, and then we're coming back three  
9 weeks later.

10 MS. SHARKO: What about the week of June 18th?

11 JUDGE WOLFSON: No. I'm out of the country.  
12 June was a tight month for me because I have a  
13 conference and vacation plans. That's why that last  
14 week was the only week that worked really well other  
15 than the early part of the month and that's too early  
16 to come in after we've just been here.

17 MS. SHARKO: How about the 29th?

18 JUDGE WOLFSON: The 28th and 29th are both  
19 problems for me.

20 MS. O'DELL: What about moving the July  
21 conference up in the month, maybe the week of the 9th  
22 or the 16th and we could take care of both at the same  
23 time?

24 JUDGE WOLFSON: I can do that. I can move you  
25 in to early July.

1 MS. SHARKO: I'm on vacation those weeks.

2 JUDGE WOLFSON: When do you come back?

3 MS. SHARKO: I come back the evening of  
4 July 23rd.

5 JUDGE WOLFSON: That's why we did the 25th.  
6 You are away the week of the 9th and the 16th?

7 MS. SHARKO: Yes.

8 JUDGE WOLFSON: How about the 6th? That's the  
9 July 4th week.

10 MS. SHARKO: I can do the morning of the 9th.  
11 We don't leave until later in the day.

12 JUDGE WOLFSON: Are you sure?

13 MS. SHARKO: Yes.

14 JUDGE WOLFSON: The 9th is good for me.

15 MS. PARFITT: I can make the 9th.

16 MS. O'DELL: The 9th is fine.

17 JUDGE WOLFSON: So July 9th. Take off the  
18 28th of June and take off July 25th and we're going to  
19 meet on the 9th.

20 Do you want to pick a date in August while  
21 we're here now? Now, we'll work off the fact you are  
22 coming on the 9th. We can do the week of the 6th, the  
23 week of the 13th.

24 MS. PARFITT: With regard to July 9th, what  
25 time of day is that? I might be flying in that



1 morning. That's all I'm wondering.

2 JUDGE WOLFSON: We'll do 10:30 on the 9th.

3 You are fine with that. Right?

4 MS. SHARKO: Yes, 10:30 is okay.

5 JUDGE WOLFSON: What about the week of  
6 August 6th or the week of August 13th? Any good or  
7 bad days?

8 MS. SHARKO: I'm away August 10th and then the  
9 following week.

10 JUDGE WOLFSON: We can do the 7th, 8th or 9th  
11 of that week. Is that okay?

12 MS. SHARKO: Yes.

13 MS. O'DELL: What was that, your Honor?

14 JUDGE WOLFSON: August 7th, 8th or 9th?

15 MS. O'DELL: The 9th would be preferred for me  
16 and my co-counsel.

17 I'm jealous of Ms. Sharko's vacation schedule.

18 MS. SHARKO: Well, in August I'm driving my  
19 daughter to graduate school in Utah. There should be  
20 room in the back of the van.

21 JUDGE WOLFSON: That's no vacation from my  
22 perspective.

23 MS. SHARKO: There are a lot of good stops in  
24 North Dakota.

25 MS. O'DELL: I like North Dakota.

1 JUDGE WOLFSON: Does the 9th work?

2 MS. SHARKO: Would it be possible to do it  
3 earlier in the week?

4 MR. SILVER: Imerys has a problem with that  
5 week. National counsel is not available that week.

6 JUDGE WOLFSON: How about the week of the  
7 13th? No days work?

8 MS. SHARKO: The 23rd or 24th of August?

9 JUDGE WOLFSON: And you are off the entire  
10 week of the 13th. Is that correct?

11 MS. SHARKO: Yes. How about August 1st, 2nd  
12 or 3rd?

13 JUDGE WOLFSON: No. I'm not here.

14 I could do the week of the 23rd or 24th. But  
15 you'll have to send everything to my courtroom deputy.  
16 Wayne is going to be out, so he can't forward anything  
17 to me. That's the problem. I will be missing my help  
18 that week. He's gone.

19 MS. O'DELL: So the 23rd. Is that the date?

20 JUDGE WOLFSON: Or the 22nd. It doesn't  
21 matter.

22 MS. O'DELL: Either one is fine with us.

23 JUDGE WOLFSON: The 22nd?

24 MS. SHARKO: Can we do the 23rd?

25 JUDGE WOLFSON: Yes, I could do the 23rd, at

1 10:30.

2 All right. August 23rd at 10:30 and July 9th  
3 at 10:30. Those are our next dates. If something  
4 comes up in the interim you get in touch with me.  
5 That's it. You'll go work with Judge Pisano.

6 You are going to let me know about the testing  
7 and whether that can be done any sooner. Correct?

8 MS. O'DELL: Yes, your Honor.

9 JUDGE WOLFSON: I guess that's it, if you  
10 don't have anything else.

11 Thank you.

12 THE DEPUTY CLERK: All rise.

13 (Proceedings concluded.)  
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C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello  
Vincent Russoniello, CCR  
Certificate No. 675

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1	29th [2] - 39:17, 39:18	<b>ABOVE</b> [1] - 3:12	<b>amend</b> [2] - 30:16, 37:2
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